IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 15TH MARCH 2007 / 24TH PHALGUNA 1928

OP.No. 3390 of 2002(C)

PETITIONER:

C.K.RATHEESH BABU, P.W.D. CONTRACTOR,
CHANKOOR HOUSE, KODUMON EAST P.O., PATHANAMTHITTA.

BY ADV. SRI.ASOK M.CHERIAN

RESPONDENTS:
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1. EXECUTIVE ENGINEER,
P.W.D. BUILDINGS DIVISION, PATHANAMTHITTA.

2. DISTRICT COLLECTOR AND MEMBER SECRETARY,
DISTRICT LEVEL COMMITTEE FOR SC/ST DEVELOPMENT,
PATHANAMTHITTA.

3. CHIEF ENGINEER,
P.W.D., GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.

4. CHIEF ENGINEER,
IRRIGATION DEPARTMENT, GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SMT.SMITHA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 15/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO.6090/2002 IN O.P. NO.3390/2002

DISMISSED:

15.3.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF THE ORDER DT.27.3.2001 ISSUED BY R2.

P2: TRUE COPY OF THE LETTER DT.28.5.2001 ISSUED FROM R1.

P3: TRUE COPY OF ORDER DT.8.1.2002 ISSUED BY R1.

TRUE COPY

P.S. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.3390 of 2002

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Dated this the 15th day of March, 2007.

JUDGMENT

The petitioner is challenging Ext.P3 order whereunder the Executive Engineer has confirmed demand of Rs.1,23,790/- against petitioner which represents value of bitumen and cement supplied to the petitioner for construction of a road. Admittedly work ought to have been completed in February 1997 and on petitioner's failure to complete the work, time was extended by more than three years i.e. till end of May 2000. Inspite of extension of time and payment of part bills and supply of materials by the Department, petitioner failed to execute the work. Even though contract could have been cancelled and work reawarded at risk and cost of the petitioner, it was not done so. On the other hand, work was rearranged at the cost of the Department and all what is demanded now is the cost of bitumen and cement supplied to the petitioner. I have gone through the details available on record which shows that the amount demanded is only value of 307 bags of cement supplied and 50 barrels of bitumen supplied which were admittedly not used by the petitioner for the execution of the work nor returned to the Department. In the circumstances, demand of

compensation of Rs.1,23,790/- is rightly held to be due from the petitioner. However, I feel petitioner can be granted complete waiver of interest on the said amount, if petitioner makes payment on or before 15.4.2007.

2. So far as challenge against blacklisting of the petitioner is concerned, since there was stay against operation of the impugned order, petitioner could have tendered for other work and if petitioner has successfully completed contract awarded during period of stay, then there is no scope for blacklisting the petitioner. However, if payment is not made as above, then respondents will not only be free to proceed for recovery, but can blacklist the petitioner.

The O.P. is disposed of as above.

C.N.RAMACHANDRAN NAIR
Judge

pms